



Planning Department

10/15 (10)

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6631  
Fax (978) 929-6340  
planning@acton-ma.gov

**MEMORANDUM**

**To:** Board of Selectmen **Date:** September 21, 2012

**From:** Roland Bartl, AICP, Planning Director *R.B.*

**Subject:** Bay Circuit Trail Easement at Robbins Brook

Attached for your acceptance signature is the easement document from NIC Realty that grants the Town a public easement access at the north end of Robbins Brook between Main Street and the future Bruce Freeman Rail Trail. This particular easement facilitates the Bay Circuit Trail Route. The Board of Selectmen stipulated the granting of this easement in 2009 in a decision to extend the special permit Robbins Brook. Town Meeting voted to accept the easement in 2009. The easement plan is already recorded at the registry (see attached background documents).

Please sign the acceptance page of the easement and return it to me. I will then ask Town Counsel to record it in Cambridge.

Please note that this is step 1 in securing the easement that the Board and Town Meeting had envisioned in 2009. Step 2 will be to clear the public access through the access easement that the Nashoba Sportman's Club has over much of the same area. Their easement is more exclusive than is suitable for the Town's needs of public access. I will pursue this after step 1 is completed.

Thank you -

**THIRTIETH AMENDMENT TO MASTER DEED OF ROBBINS BROOK  
CONDOMINIUM  
Acton, Massachusetts**

This Thirtieth Amendment (this "Amendment") to the Master Deed of Robbins Brook Condominium is made as of this 14<sup>th</sup> day of September, 2012 by NIC Realty, LLC, a Massachusetts limited liability company ("NIC") pertaining to the Robbins Brook Condominium (the "Condominium") created by Master Deed dated January 23, 2002 and recorded on January 24, 2002 in the Middlesex South District Registry of Deeds (the "Registry") in Book 34644, Page 63, as amended of record (the "Master Deed").

**BACKGROUND**

WHEREAS, Acton Assisted Living, LLC ("AAL") was the declarant under the Master Deed and pursuant thereto held Development Rights (as such term is defined in the Master Deed) relating to the Condominium.

WHEREAS, AAL assigned its Development Rights to Eastern Road, LLC pursuant to that certain Assignment and Conveyance of Development Rights dated March 29, 2005 and recorded with the Registry in Book 44911, Page 479.

WHEREAS, Eastern Road, LLC assigned its Development Rights to RRV, LLC ("RRV") pursuant to that certain Assignment and Conveyance of Development Rights dated April 5, 2005 and recorded with the Registry in Book 44951, Page 100.

WHEREAS, RRV gave two construction mortgages to NIC, which granted, among other things, all of RRV's right, title and interest in the Development Rights.

WHEREAS, NIC foreclosed upon such mortgages pursuant to that certain Massachusetts Foreclosure Deed dated May 7, 2010 and recorded with the Registry in Book 54685, Page 215, thereby transferring the Development Rights from RRV to NIC.

WHEREAS, the Town of Acton has required that an easement be granted across a portion of the property where the Condominium is located pursuant to and as particularly described in the Special Permit # 11/18/98-366 from the Town of Acton Board of Selectmen affecting the Condominium, as extended by the Board of Selectmen on January 12, 2009 (the "Special Permit").

WHEREAS, pursuant to Section 19 of the Master Deed, the Declarant (as such term is defined in the Master Deed) has the right to amend the Master Deed to comply with the requirements of the Town of Acton or any agency or department thereof.

WHEREAS, in order to comply with the Special Permit, NIC, as the current Declarant under the Master Deed by virtue of being the current holder of the Development Rights, hereby desires to amend the Master Deed to specifically reserve to the Declarant the right to grant an easement to the Town of Acton in order to comply with the requirements of the Special Permit.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NIC hereby amends the Master Deed as follows:

1. Declarant's Right to Grant Easement. Section 19 of the Master Deed is hereby amended by adding the following:

“The Declarant shall have the right and easement to grant an easement to the Town of Acton over, under and across the common areas and facilities of the Condominium, including any portion of the land of the Condominium, in order to comply with the requirements of the Town of Acton, including the Special Permit, on terms and conditions mutually agreeable between the Declarant and the Town of Acton.”

2. Master Deed Remains in Full Force and Effect. Except as amended hereby, the Master Deed shall remain unmodified and in full force and effect in accordance with its terms.

*[Remainder of page intentionally left blank]*

EXECUTED under seal as of the date first written above.

NIC REALTY, LLC

By: Nicole Pace

Name: Nicole Pace

Title: Manager

State of New Hampshire  
~~COMMONWEALTH OF MASSACHUSETTS~~

Rockingham, County, SS

On this 14<sup>th</sup> day of September 2012, before me, the undersigned notary public, personally appeared Nicole Pace of NIC Realty, LLC, a Massachusetts limited liability company, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.

Sheri Lynn E. Sullivan  
Notary Public

My Commission Expires:

**SHERI-LYNN E. SULLIVAN, Notary Public**  
**My Commission Expires July 28, 2015**

RECORD AND RETURN TO:

~ Recording Information Area ~

### EASEMENT

This Easement is executed this 14<sup>th</sup> day of September 2012 by and between NIC Realty, LLC, a Massachusetts limited liability company having an address of 7 Westview Drive, Litchfield, New Hampshire 03052 ("Grantor"), and the Town of Acton ("Grantee"), a municipal corporation having an address of 472 Main Street, Acton, Massachusetts 01720 ("Grantee").

WHEREAS, Grantor is the successor declarant of the Robbins Brook Condominium (the "Condominium") located in Acton, Massachusetts, pursuant to that certain Master Deed dated January 23, 2002 and recorded with the Middlesex South District Registry of Deeds in Book 34644, Page 63, as amended of record (the "Master Deed").

WHEREAS, in connection with a special permit issued by Grantee for development of the Condominium, Grantor has agreed to grant, and Grantee has agreed to accept (i) a twenty (20) foot wide easement over a portion of the common areas and facilities of the Condominium shown as "Proposed 20 Foot Wide Easement to the Town of Acton for the Maintenance of a Pedestrian Trail" (the "20' Easement") shown on the plan attached hereto as Exhibit A (the "Plan") entitled "Revised Site Plan (ANR) The Robbins Brook Condominium in Acton, Massachusetts Middlesex County" prepared by Gregsak Engineering, Inc. and dated April 6, 2011, and (ii) a thirty (30) foot wide easement over a portion of the Property shown as "Existing Driveway to Nashoba Sportsmen's Club" on the Plan (the "30' Easement," together with the 20' Easement, the "Easement Premises").

WHEREAS, pursuant to the Thirtieth Amendment to the Master Deed of the Condominium, recorded simultaneously herewith, Grantor has the right and authority to grant this Easement to the Grantee.

NOW THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

Property address: \_\_\_\_\_, Acton, MA

1. Grantor hereby grants to Grantee a perpetual right and easement in gross (the “Easement”) over, under, across and upon the Easement Premises for Grantee to use the Easement Premises in common with Grantor and others from time to time entitled to use the same (a) for the passage and re-passage by the public on foot, bicycle and other non-motorized transportation devices (as well as those motorized transportation devices necessary for the mobility of persons with disabilities) between Main Street and the railroad right of way owned by the Commonwealth of Massachusetts by and through MassDOT (formerly EOTC), which is designated as the future Bruce Freeman Rail Trail, and (b) to clear the Easement Premises and construct, install, inspect, repair, replace, operate, maintain, use and remove a trail (paved or otherwise) on or within the Easement Premises. Notwithstanding the foregoing, Grantee shall be permitted to use motorized transportation devices within the Easement Premises in connection with exercising its rights under the foregoing clause (b).

2. Grantor hereby agrees not to grant any other easements, leases, deeds, licenses or any other rights to the Easement Premises that will interfere with the Easement without the prior written consent of Grantee. Any easement, lease, deed, license, or any other rights granted in violation of this provision shall be null and void.

3. Grantor shall have no obligation to maintain, operate, repair and/or replace the Easement Premises, including without limitation the trail located within the Easement Premises or to install or construct said trail.

4. Grantee shall have the right to permit members of the public to use and traverse the Easement Premises as part of the “Bay Circuit Trail” or otherwise, and Grantee shall be permitted to allow its employees and designees to exercise any or all of Grantee’s rights under clause (b) of Section 1 above.

5. The grant of the rights herein is not intended to prohibit the use of the Easement Premises by Grantor and tenant and owners of units in the Condominium so long as any such use does not interfere with or prohibit the full use and enjoyment by Grantee of the rights hereby granted.

6. All rights and privileges granted herein, including all benefits and burdens, shall run with the land and the Condominium and shall be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns, and legal representatives.

Grantor warrants and represents that it has the sole and exclusive right to grant the Easement, and that there are no mortgages or encumbrances of record or otherwise on the Easement Premises that will negate or negatively impact this Easement.

Grantor further warrants and represents that the individual executing this Easement is duly authorized and fully qualified to execute this Easement on behalf of the Grantor.

For Grantor’s title see Foreclosure Deed dated May 14, 2010 recorded in the Middlesex South District Registry of Deeds in Book 54685, Page 215.

Exhibit A

Plan

(see attached)

3002

## REFERENCE:

PERIMETER INFORMATION DERIVED FROM PLAN ENTITLED "FULL SERVICE RETIREMENT COMMUNITY, ACTON, MA UTILITIES PLAN" DATED NOV. 10, 1998 BY STANISKI & MIGNARY, INC.  
MIDDLESEX REGISTRY OF DEEDS  
PLAN NUMBER 578 OF 2007

## NOTE:

THIS PLAN IS BASED ON AN ON THE GROUND SURVEY. THE CERTIFICATION HEREON IS INTENDED TO MEET THE REQUIREMENTS OF THE REGISTRY OF DEEDS ONLY, AND IS NOT A CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN, OR AS TO THE EXISTENCE OR RECORDING OF UNRECORDED EASEMENTS. OWNERSHIP OF ADJUTING PROPERTIES ARE FROM ASSESSORS RECORDS.

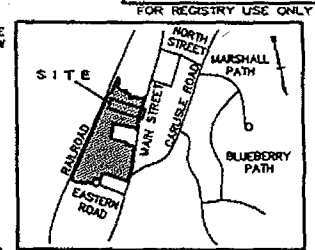
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED  
TOWN OF ACTON PLANNING BOARD

*Robert Smith*  
DATE: *April 27, 2011*

I CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE LINES OF EXISTING OWNERSHIP, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS AND WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF OWNERSHIP OR FOR NEW WAYS ARE SHOWN; AND THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

*Robert Smith*  
DATE: *April 27, 2011*  
REGISTERED LAND SURVEYOR

PROPOSED 20 FOOT WIDE EASEMENT TO THE TOWN OF ACTON FOR THE MAINTENANCE OF A PEDESTRIAN TRAIL



VICINITY MAP  
SCALE: 1"=1000'

MAP CS PARCEL 35  
NASHOBA SPORTSMEN CLUB  
PO BOX 2333  
ACTON, MA  
BK 07006, PG 310

MAP BS PARCEL 14  
DN PROPERTIES, LLC  
930 MAIN STREET  
ACTON, MA  
BK 41720, PG 589

MAP BS PARCEL 39-1  
LAURE REALTY TRUST  
WERNER GOSSELS, JR. & JACOB FURMAN, JR.  
17 BENNETT ROAD  
WAYLAND, MA  
ACTON, MA  
BK 12819, PG 528

THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED PEDESTRIAN EASEMENT TO THE TOWN OF ACTON AND THE REVISED LOCATIONS OF UNITS 46-49, 77-80 AND 85

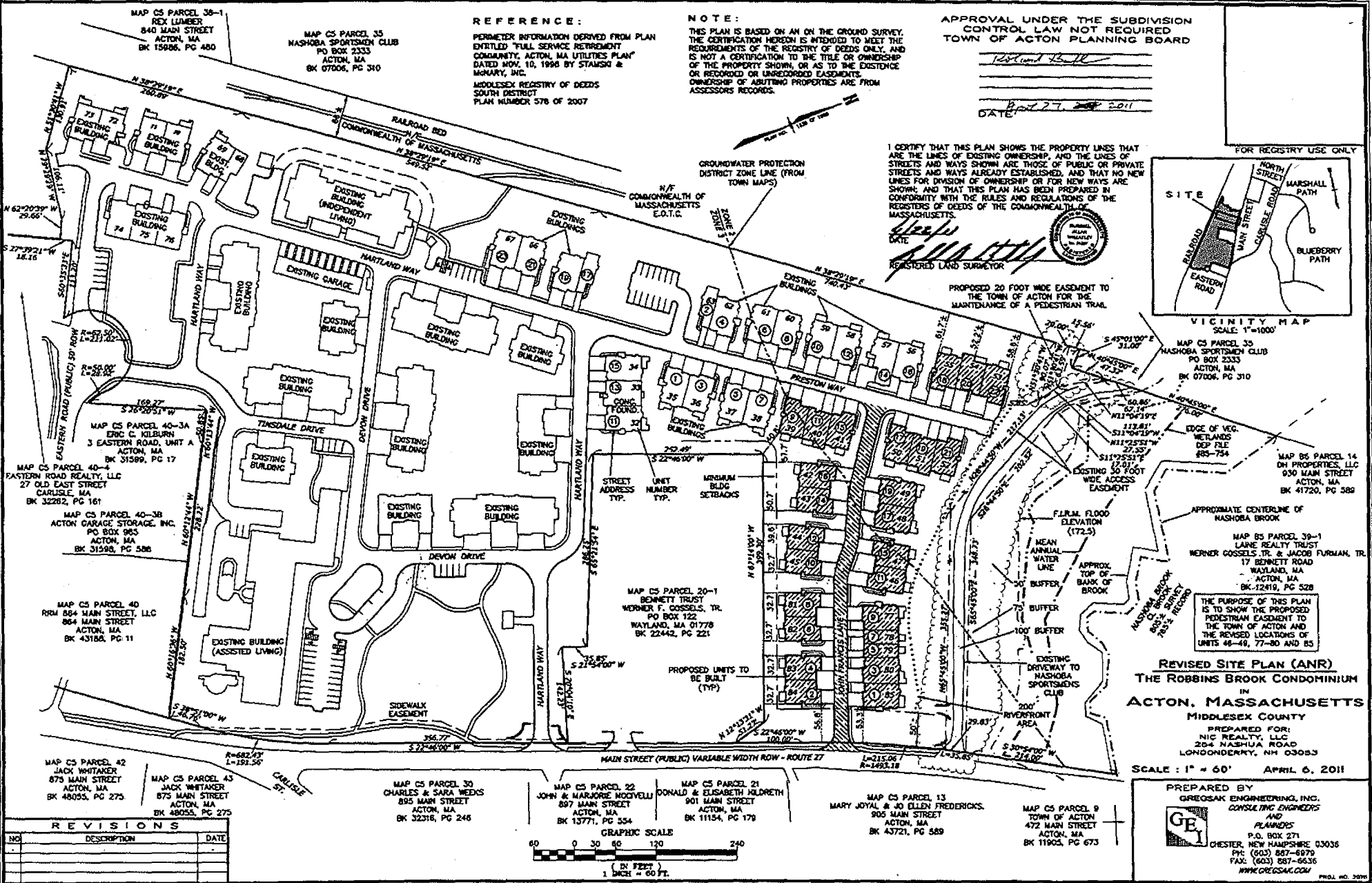
REVISED SITE PLAN (ANR)  
THE ROBBINS BROOK CONDOMINIUM  
IN  
ACTON, MASSACHUSETTS  
MIDDLESEX COUNTY

PREPARED FOR:  
NIC REALTY, LLC  
204 NASHUA ROAD  
LONDONDERRY, NH 03083

SCALE: 1" = 60' APRIL 6, 2011

PREPARED BY  
GREGSK ENGINEERING, INC.  
CONSULTING ENGINEERS  
AND  
PLANNERS  
P.O. BOX 271  
CHESTER, NEW HAMPSHIRE 03036  
PH: (603) 887-6979  
FAX: (603) 887-6636  
WWW.GREGSK.COM

PROJ. NO. 3001



NO.	DESCRIPTION	DATE

3002

3002





TOWN CLERK  
EVA K. TAYLOR

**TOWN OF ACTON**  
472 MAIN STREET  
ACTON, MASSACHUSETTS, 01720  
TELEPHONE (978) 264-9615  
FAX (978) 264-9630  
clerk@acton-ma.gov

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**EXCERPT OF THE ANNUAL TOWN MEETING HELD**

**MONDAY, APRIL 6, 2009, 7:00 P.M.**

**ACTON-BOXBOROUGH REGIONAL HIGH SCHOOL AUDITORIUM**

**WITH ADJOURNED SESSIONS HELD APRIL 7, APRIL 13, 2009**

NUMBER OF REGISTERED VOTERS ATTENDING TOWN MEETING

APRIL 6, 2009 – 589    APRIL 7, 2009 – 354    APRIL 13, 2009 – 458

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**ARTICLE 38 \*      ACCEPT TRAIL EASEMENT – BAY CIRCUIT TRAIL**

(Two-thirds vote)

To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise and to accept a deed of an easement interest for purposes of establishing and maintaining a trail for public non-motorized use, on such terms and conditions and in a final location or locations as the Selectmen may determine, on, across, over, and/or under a strip of land at 908 Main Street in Acton between parcels 6 and 8 shown on page C-5 of the 2007 edition of the Acton Town Atlas, and further see if the Town will raise, appropriate, transfer from available funds or accept gifts for this purpose, or take any other action relative thereto.

**MOTION:** Mr. Magee moves that the Town authorize the acquisition of the easements as set forth in the Article.

**Held from consent**

**MOTION CARRIES UNANIMOUSLY**

# Article 38 – Easement Bay Circuit Trail

(Two-thirds Vote)

Mr. Magee moves that the Town  
authorize the acquisition of the  
easements as set forth in the Article.

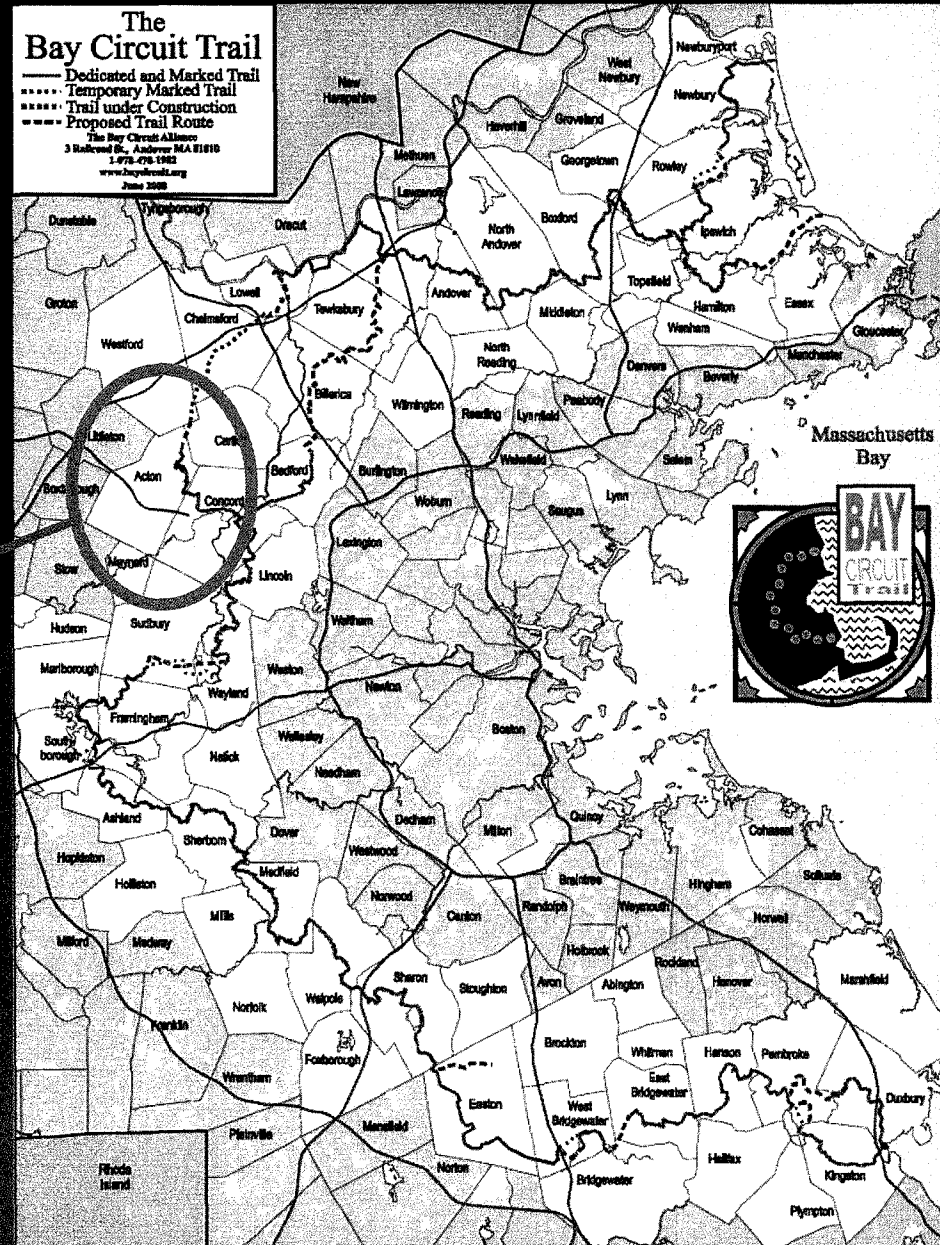
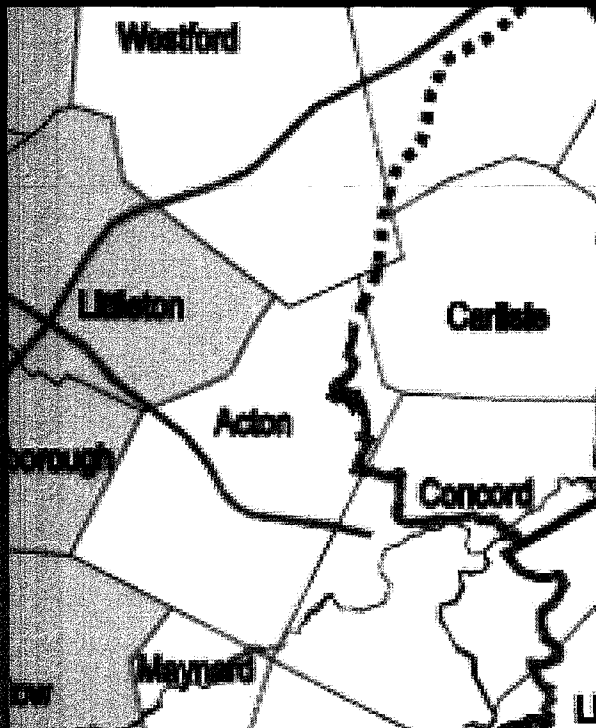


# Article 38 – Easement Bay Circuit Trail



Article 38 – Amended Meeting  
Bay Circuit Trail Easement

# Article 38 Easement Bay Circuit Trail



Article 38 - Annual Town Meeting 2008  
 Bay Circuit Trail Easement



Planning Department

**TOWN OF ACTON**

472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9636  
Fax (978) 264-9630  
[planning@acton-ma.gov](mailto:planning@acton-ma.gov)  
[www.acton-ma.gov](http://www.acton-ma.gov)

January 20, 2009

Mr. Stephen Vazza  
780 Dedham Street, Suite 400  
Canton, MA 02021

**Re: Site Plan/Special Use Permit #11/18/98-366, Phase 3  
- Robbins Brook - 886-900 Main Street and 8 Eastern Road**

Dear Mr. Vazza:

This correspondence confirms that the Acton Board of Selectmen voted on January 12, 2009 to extend the above referenced special permit by 2 years until January 12, 2011<sup>1</sup>. This action came after receipt of a letter from your attorney, Amy Fracassini of Davis Malm & D'Agostine P.C., dated January 7, 2009.

It outlines your understanding and agreement with respect to the proposed Bay Circuit Trail easement over the north-end of the subject property. Please stay in contact regarding your progress with the condominium association on this matter. In anticipation of the Town's receiving the easement, I have entered a warrant article for the annual town in April to authorize acceptance of the easement.

Sincerely,

Roland Bartl, AICP  
Planning Director

Cc: Amy Fracassini, Davis Malm D'Agostine P.C., One Boston Place, Boston, MA 02108  
Joseph March, Stamski and McNary, Inc., 80 Harris Street, Acton, MA 01720

I:\planning\site plan\366 permit extension - phase 3.3 granted.doc

<sup>1</sup> The original special permit was issued on September 12, 2006 and expired on September 12, 2008. A timely request for extension was received on August 11, 2008. The Board of Selectmen addressed the matter at a meeting on September 8, 2008, and again at meetings in October and November, each time granting temporary permit extensions, the last until January 12, 2009.

Amy L. Fracassini

January 7, 2009

**By Facsimile: (978) 264-9630 and U.S. Mail**

Board of Selectmen  
Town of Acton  
472 Main Street  
Acton, MA 01720  
Attn: Roland Bartl, ACIP, Planning Director

RE: Easement between Main Street and the Penn Central/EOT Railroad Right of Way for the Bay Circuit Trail.

Ladies and Gentlemen:

We represent RRV, LLC ("RRV") and this correspondence is in response to a request from Roland Bartl regarding the Town of Acton (the "Town") acquiring an easement between Main Street and the Penn Central/EOT Railroad Right of Way for the Bay Circuit Trail over land within the Robbins Brook Condominium (the "Condominium"). It is our understanding that the Town would like a pedestrian access easement located within the existing thirty (30) foot Right of Way reserved for the benefit of Nashoba Sports Sportsman's Club, Inc. and a ten (10) foot wide extension of that easement over the Condominium property to connect to the Executive Office of Transportation currently existing right of way for use in connection with the future Bruce Freeman Rail Trail (hereinafter collectively the "Proposed Easement").

RRV is supportive of the request and is committed to working with the Town to accomplish the Proposed Easement. RRV, however, is not the party that can convey the Proposed Easement because the land that would be encumbered by the Proposed Easement is part of the common area of the Condominium. Based on a preliminary review of the Master Deed, as amended to date, RRV does not appear to have reserved rights to grant the Proposed Easement to the Town.

RRV will initiate a request to the Condominium and facilitate efforts to obtain the Proposed Easement for the benefit of the Town. RRV will do what it can to help the Town in its efforts to obtain the Proposed Easement from the Condominium.

direct 617-589-3862 direct fax 617-305-3133  
email afracassini@davismalm.com

ONE BOSTON PLACE • BOSTON • MA • 02108  
617-367-2500 • fax 617-523-6215  
www.davismalm.com

Board of Selectmen  
Town of Acton  
January 7, 2009  
Page 2

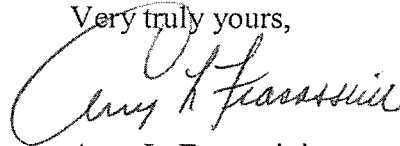
DAVIS MALM &  
DAGOSTINE P.C.  
ATTORNEYS AT LAW

We hereby request that the Town extend the Special Permits pursuant to cover letter from Joseph Marsh of Stamski & McNary, Inc., dated August 11, 2008, at its meeting on January 12, 2009, so that RRV can remain in good standing with the lender providing construction financing for this phase of Robbins Brook Condominium.

If you have any questions, please feel free to contact me at (617) 589-3862 or Paul Feldman at (617) 589-3831 with respect to the foregoing.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Amy L. Fracassini".

Amy L. Fracassini

ALF:nba

cc: RRV, LLC

MAP C5 PARCEL 38-1  
REX LUMBER  
840 MAIN STREET  
ACTON, MA  
BK 15986, PG 480

MAP C5 PARCEL 35  
NASHOBA SPORTSMEN CLUB  
PO BOX 2333  
ACTON, MA  
BK 07006, PG 310

REFERENCE:  
PERIMETER INFORMATION DERIVED FROM PLAN  
ENTITLED "FULL SERVICE RETIREMENT  
COMMUNITY, ACTON, MA UTILITIES PLAN"  
DATED NOV. 10, 1998 BY STAMSKI &  
McNARY, INC.  
MIDDLESEX REGISTRY OF DEEDS  
SOUTH DISTRICT  
PLAN NUMBER 578 OF 2007

NOTE:  
THIS PLAN IS BASED ON AN ON THE GROUND SURVEY.  
THE CERTIFICATION HEREON IS INTENDED TO MEET THE  
REQUIREMENTS OF THE REGISTRY OF DEEDS ONLY, AND  
IS NOT A CERTIFICATION TO THE TITLE OR OWNERSHIP  
OF THE PROPERTY SHOWN, OR AS TO THE EXISTENCE  
OR RECORDED OR UNRECORDED EASEMENTS.  
OWNERSHIP OF ABUTTING PROPERTIES ARE FROM  
ASSESSORS RECORDS.

APPROVAL UNDER THE SUBDIVISION  
CONTROL LAW NOT REQUIRED  
TOWN OF ACTON PLANNING BOARD

*Robert P. Burt*  
DATE *April 27, 2011*

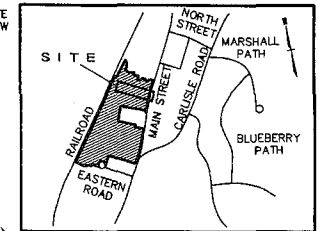
Middlesex Registry of Deeds,  
Southern District  
Cambridge, Massachusetts  
Plan No. *41* of 2011  
Rec'd *6-23-2011*  
at *2 H 19 M 9* M  
Attest  
*Laura C. Pomeroy*  
Register

FOR REGISTRY USE ONLY

I CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT  
ARE THE LINES OF EXISTING OWNERSHIP, AND THE LINES OF  
STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE  
STREETS AND WAYS ALREADY ESTABLISHED, AND THAT NO NEW  
LINES FOR DIVISION OF OWNERSHIP OR FOR NEW WAYS ARE  
SHOWN, AND THAT THIS PLAN HAS BEEN PREPARED IN  
CONFORMITY WITH THE RULES AND REGULATIONS OF THE  
REGISTERS OF DEEDS OF THE COMMONWEALTH OF  
MASSACHUSETTS.

DATE *April 27, 2011*  
REGISTERED LAND SURVEYOR

PROPOSED 20 FOOT WIDE EASEMENT TO  
THE TOWN OF ACTON FOR THE  
MAINTENANCE OF A PEDESTRIAN TRAIL



VICINITY MAP  
SCALE: 1"=1000'

MAP C5 PARCEL 35  
NASHOBA SPORTSMEN CLUB  
PO BOX 2333  
ACTON, MA  
BK 07006, PG 310

MAP B6 PARCEL 14  
DH PROPERTIES, LLC  
930 MAIN STREET  
ACTON, MA  
BK 41720, PG 589

MAP B5 PARCEL 39-1  
LAINE REALTY TRUST  
WERNER GOSSELS TR. & JACOB FURMAN, TR.  
17 BENNETT ROAD  
WAYLAND, MA  
ACTON, MA  
BK 12419, PG 528

THE PURPOSE OF THIS PLAN  
IS TO SHOW THE PROPOSED  
PEDESTRIAN EASEMENT TO  
THE TOWN OF ACTON AND  
THE REVISED LOCATIONS OF  
UNITS 46-49, 77-80 AND 85

REVISED SITE PLAN (ANR)  
THE ROBBINS BROOK CONDOMINIUM  
IN  
ACTON, MASSACHUSETTS

MIDDLESEX COUNTY  
PREPARED FOR:  
NIC REALTY, LLC  
254 NASHUA ROAD  
LONDONDERRY, NH 03053

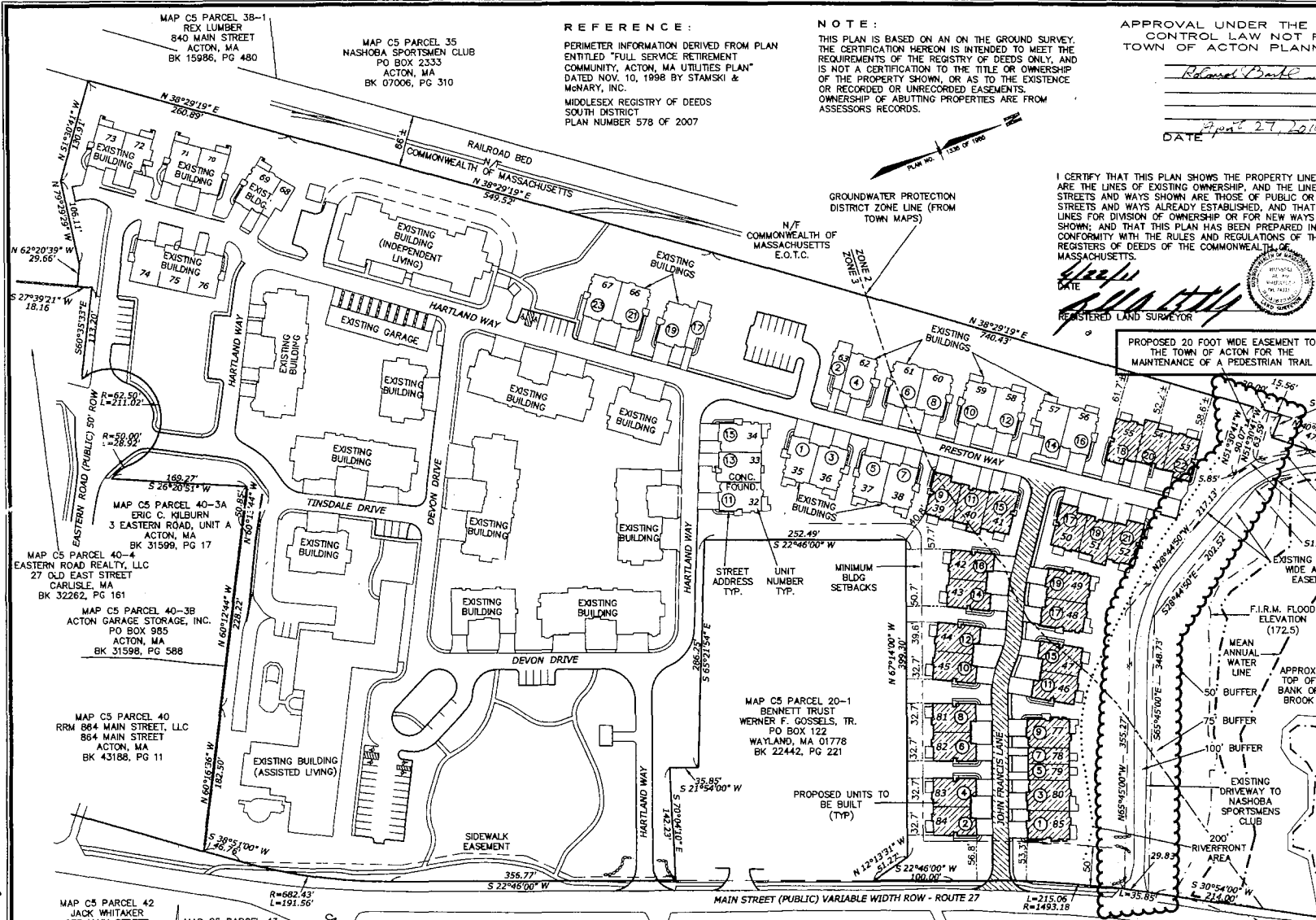
SCALE: 1" = 60' APRIL 6, 2011

PREPARED BY  
GREGSAK ENGINEERING, INC.  
CONSULTING ENGINEERS  
AND  
PLANNERS

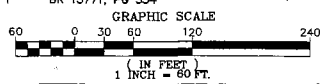


P.O. BOX 271  
CHESTER, NEW HAMPSHIRE 03036  
PH: (603) 887-6979  
FAX: (603) 887-6636  
WWW.GREGSAK.COM

PROJ. NO. 2075



REVISIONS		
NO	DESCRIPTION	DATE



41